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 Sauphtware, Inc. d/b/a Panda Mail

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

MIRA BLANCHARD, an individual;  
 RYAN COOPER, an individual; MARK  
 DAVIS, an individual; CHANDRA  
 GREENBERG, an individual; JAMES  
 JOBE, an individual; DEBRA KOTTONG,  
 an individual; OGEN LAMA, an  
 individual; MARIA MARQUEZ, an  
 individual; VANESSA POWERS, an  
 individual; and GAIL TAYLOR, an  
 individual;

Plaintiffs,

v.

FLUENT, INC., a Delaware corporation;  
 REWARDS ZONE USA, LLC, a Delaware  
 limited liability company; REWARDS  
 FLOW, LLC, a Delaware limited liability  
 company; AMERICAN PRIZE CENTER,  
 LLC, a Delaware limited liability  
 company; MOHIT SINGLA, an individual;  
 SAUPHTWARE, INC., a Nevada  
 corporation; ADREACTION, a business of  
 unknown formation; ANGLO IDITECH, a  
 business of unknown formation;  
 FORTANALYSIS8 DEVELOP, a business  
 of unknown formation; CONCEPT  
 NETWORK, a business of unknown  
 formation; DIEGO RUFINA, an  
 individual; PRISCILLA AREKELIAN, an  
 individual; ANDRES MARY, an  
 individual; and DOES 1-1000;

Defendants.

Case No. 17-cv-04497 MMC

**DEFENDANT SAUPHTWARE, INC. D/B/A  
 PANDA MAIL'S REQUEST FOR JUDICIAL  
 NOTICE IN SUPPORT OF REPLY IN  
 SUPPORT OF MOTION TO DISMISS  
 PLAINTIFFS' FIRST AMENDED  
 COMPLAINT**

Hearing Date: September 15, 2017

Hearing Time: 9:00 a.m.

Courtroom: San Francisco Courthouse  
 Courtroom 7 - 19th Floor  
 450 Golden Gate Avenue  
 San Francisco, CA 94102

Judge: Hon. Maxine M. Chesney

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## REQUEST FOR JUDICIAL NOTICE

This Court may properly take judicial notice of a fact that is not subject to reasonable dispute because it is: (1) generally known within the territorial jurisdiction of the trial court or (2) “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Courts are required to take judicial notice of facts if requested by a party and supplied with the necessary information. Fed. R. Evid. 201(b) and (d).

Courts regularly take judicial notice of evidence of a bill’s legislative history where the evidence is not subject to reasonable dispute. *E.g., Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226-27 (1959) (taking judicial notice of original version of bill and excerpts from House and Senate Journals discussing bill); *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005) (holding judicial notice of legislative history, including the legislature’s bill analysis, is proper).

“Legislative records may be looked at to determine legislative intention.” *Southland Mech. Constructors v. Nixen*, 119 Cal. App. 3d 417, 427 (1981). The statements of a bill’s author or sponsor may properly be considered when determining legislative intent. *State v. Altus Fin.*, 36 Cal. 4th 1284, 1296 (2005); *Branciforte Heights, LLC v. City of Santa Cruz*, 138 Cal. App. 4th 914, 937-38 (2006); *Bronco Wine Co. v. Jolly*, 33 Cal. App. 4th 943, 977-78 n.46 (2004) (bill author’s statements permissible); *McVeigh v. Doe*, 138 Cal. App. 4th 898, 903-04 (2006) (bill author’s statement permissible).

Courts consider a variety of legislative materials in interpreting statutes. *E.g., In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006) (legislative committee reports and staff analyses); *Supply-Miller Contracting Co. v. Cal. Occupational Safety & Health Appeals Bd.*, 138 Cal. App. 4th 684, 698-99 n. 6 (2006) (legislative committee reports and staff analyses); *Coburn v. Sievert*, 133 Cal. App. 4th 1483, 1500 (2005) (legislative committee reports, staff analyses and third reading analysis); *Kuperman v. San Diego Assessment Appeals Bd. No. 1*, 137 Cal. App. 4th 918, 934 (2006) (department analysis); *Campbell v. Regents of the Univ. of Cal.*, 35

1 Cal. 4th 311, 331 (2005) (bill analysis worksheets); *City of Santa Cruz*, 138 Cal. App. 4th at 926  
 2 (republican and democratic caucus analyses).

3 Furthermore, courts may take judicial notice of public records. *Mfg. Home Cmtys., Inc. v.*  
 4 *City of San Jose*, 420 F.3d 1022, 1037 (9th Cir. 2005); *Mack v. S. Bay Beer Distribs.*, 798 F.2d  
 5 1279, 1282 (9th Cir. 1986); *Interstate Natural Gas Co. v. S. Cal. Gas Co.*, 209 F.2d 380, 385 (9th  
 6 Cir. 1953).)

7 In the present case, to properly interpret and affect the legislative intent of California  
 8 Business and Professional Code Section 27529.5, it is necessary to refer to its legislative history.

9 Defendant Sauphtware, Inc. d/b/a Panda Mail requests that this Court take judicial notice,  
 10 pursuant to Rule 201 of the Federal Rules of Evidence, of the following:

11 1. California Senate Bill No. 186 (2003-04 Reg. Sess.), as amended on June 26,  
 12 2003, a true and correct copy of which is attached hereto as **Exhibit A**. This document may be  
 13 accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030626_amended_asm.pdf)  
 14 [0200/sb\\_186\\_bill\\_20030626\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030626_amended_asm.pdf) (last accessed August 29, 2017). A court may  
 15 properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d  
 16 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

17 2. Assembly Committee on Judiciary Report dated June 26, 2003, concerning  
 18 California Senate Bill No. 186 (2003-04 Reg. Sess.), a true and correct copy of which is attached  
 19 hereto as **Exhibit B**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030626_105854_asm_comm.html)  
 20 [04/bill/sen/sb\\_0151-0200/sb\\_186\\_cfa\\_20030626\\_105854\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030626_105854_asm_comm.html) (last accessed August  
 21 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker*  
 22 *v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th  
 23 706, 719-20 (2006).

3. California Senate Bill No. 12 (2003-04 Reg. Sess.), as amended on June 26, 2003, a true and correct copy of which is attached hereto as **Exhibit C**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0001-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_12_bill_20030626_amended_asm.pdf)

[0050/sb\\_12\\_bill\\_20030626\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_12_bill_20030626_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

4. Complete Bill History, concerning California Senate Bill No. 12 (2003-04 Reg. Sess.), a true and correct copy of which is attached hereto as **Exhibit D**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0001-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_12_bill_20041130_history.html)  
[0050/sb\\_12\\_bill\\_20041130\\_history.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_12_bill_20041130_history.html) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

5. California Senate Bill No. 186 (2003-04 Reg. Sess.), as amended on July 9, 2003, a true and correct copy of which is attached hereto as **Exhibit E**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030709_amended_asm.pdf)

[0200/sb\\_186\\_bill\\_20030709\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030709_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006)

6. California Senate Bill No. 186 (2003-04 Reg. Sess.), as amended on July 10, 2003, a true and correct copy of which is attached hereto as **Exhibit F**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030710_amended_asm.pdf)

[0200/sb\\_186\\_bill\\_20030710\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030710_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006)

7. California Senate Bill No. 186 (2003-04 Reg. Sess.), as amended on August 18, 2003, a true and correct copy of which is attached hereto as **Exhibit G**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030818_amended_asm.pdf)

[0200/sb\\_186\\_bill\\_20030818\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030818_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006)

8. California Senate Bill No. 186 (2003-04 Reg. Sess.), as amended on August 25, 2003, a true and correct copy of which is attached hereto as **Exhibit H**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030825_amended_asm.pdf)

[0200/sb\\_186\\_bill\\_20030825\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030825_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006)

9. California Senate Bill No. 186 (2003-04 Reg. Sess.), as amended on September 5, 2003, a true and correct copy of which is attached hereto as **Exhibit I**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030905_amended_asm.pdf)

[0200/sb\\_186\\_bill\\_20030905\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_bill_20030905_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

10. California Senate Bill No. 1457 (2003-04 Reg. Sess.), as introduced on February 19, 2004, a true and correct copy of which is attached hereto as **Exhibit J**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1451-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1451-1500/sb_1457_bill_20040219_introduced.pdf)

[1500/sb\\_1457\\_bill\\_20040219\\_introduced.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1451-1500/sb_1457_bill_20040219_introduced.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

11. Assembly Committee on Judiciary Report dated June 22, 2004, concerning California Senate Bill No. 1457 (2003-04 Reg. Sess.), a true and correct copy of which is attached hereto as **Exhibit K**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1451-1500/sb\\_1457\\_cfa\\_20040621\\_173438\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1451-1500/sb_1457_cfa_20040621_173438_asm_comm.html) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

12. California Senate Bill No. 1457 (2003-04 Reg. Sess.), as amended on August 5, 2004, a true and correct copy of which is attached hereto as **Exhibit L**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1451-1500/sb\\_1457\\_bill\\_20040805\\_amended\\_asm.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1451-1500/sb_1457_bill_20040805_amended_asm.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

13. California Senate Bill No. 1457 (2003-04 Reg. Sess.), as approved by the Governor, filed with the Secretary of State, and Chaptered on September 17, 2004, a true and correct copy of which is attached hereto as **Exhibit M**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_1451-1500/sb\\_1457\\_bill\\_20040917\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_1451-1500/sb_1457_bill_20040917_chaptered.pdf) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

14. Senate Floor Analysis dated September 9, 2003, concerning California Senate Bill No. 186, a true and correct copy of which is attached hereto as **Exhibit N**. This document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-0200/sb\\_186\\_cfa\\_20030909\\_113316\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030909_113316_sen_floor.html) (last accessed August 29, 2017). A court may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428 F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20 (2006).

1           15.     Senate Third Reading Analysis, dated September 5, 2003, concerning California  
 2     Senate Bill No. 186, a true and correct copy of which is attached hereto as **Exhibit O**. This  
 3     document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030905_233504_asm_floor.html)  
 4     [0200/sb\\_186\\_cfa\\_20030905\\_233504\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030905_233504_asm_floor.html) (last accessed August 29, 2017). A court  
 5     may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428  
 6     F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20  
 7     (2006).

8           16.     Senate Rules Committee Analysis dated May 23, 2003, concerning California  
 9     Senate Bill No. 186, a true and correct copy of which is attached hereto as **Exhibit P**. This  
 10    document may be accessed online at [http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0151-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030523_085926_sen_floor.html)  
 11    [0200/sb\\_186\\_cfa\\_20030523\\_085926\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0151-0200/sb_186_cfa_20030523_085926_sen_floor.html) (last accessed August 29, 2017). A court  
 12    may properly take judicial notice of the legislative history of a statute. *Chaker v. Crogan*, 428  
 13    F.3d 1215, 1223 (9th Cir. 2005); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 719-20  
 14    (2006).

15           Dated: September 1, 2017

BEST BEST & KRIEGER LLP

17  
 18           By: /s/ Damian M. Moos  
 19               DAMIAN M. MOOS  
 20               Attorneys for Defendant  
 21               Sauphtware, Inc. d/b/a Panda Mail

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DECLARATION OF DANIEL L. RICHARDS

I, Daniel L. Richards, declare as follows:

1. I have personal knowledge of the facts set forth below and could competently testify to them. I am duly licensed to practice law before all the courts of the State of California and before the United States District Court for the Central District of California.

2. On August 29, 2017, I accessed the website <http://www.leginfo.ca.gov/bilinfo.html> and downloaded true and correct copies of Exhibits A–P of this Request for Judicial Notice. Exhibits A–P are true and correct copies of this legislative history materials as they appears on the website <http://www.leginfo.ca.gov/bilinfo.html> and the sub-pages available therein.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on September 1, 2017 at Irvine, California



Daniel L. Richards